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\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES \*\*\*  
\*\*\* FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH \*\*\*  
\*\*\* JUNE 2, 2011 \*\*\*

Title 23 Public Utilities and Regulated Industries  
Subtitle 2. Financial Institutions And Securities  
Chapter 40 Sale of Prepaid Funeral Benefits

A.C.A. § 23-40-119 (2011)

**23-40-119. Annual report and fee.**

(a) Each organization shall file an annual report and an annual report fee with the Insurance Commissioner on or before March 15 of each year in such form as the commissioner may require, showing the:

(1) Names or account numbers, or both, of all persons with whom contracts for prepaid funeral benefits have been made prior to January 1 of that year that had not been fully discharged on January 1;

(2) Date of contract;

(3) Name of the trustee holding the trust fund; and

(4) Amount in the trust fund under each contract on the preceding December 31.

(b) If any officer of any organization fails or refuses to file an annual report or to cause it to be filed within thirty (30) days after he or she has been notified by the commissioner that the report is due and has not been received, then, upon a finding of such failure by a court of competent jurisdiction, he or she shall be guilty of a violation.

(c) (1) Effective on and after March 15, 1997, the annual report fee shall be based on the total amount of aggregate contracts for prepaid funeral benefits outstanding and unfulfilled as of December 31 of each year and shall be payable at the time the annual report is filed.

(2) The fee shall be based on the following schedule and shall be payable to the State Insurance Department Prepaid Trust Fund: [Click here to view image.](#)

(d) (1) (A) (i) (a) Effective for all prepaid funeral benefits contracts executed on and after April 1, 1997, each licensee selling a prepaid funeral benefits contract shall remit to the State Insurance Department a one-time per-contract fee of not less than five dollars (\$5.00) for each prepaid funeral benefits contract, including any amendments thereto, entered into by the licensee, whether cash or trust funded or funded by an insurance policy or annuity contract, unless the per-contract fees are otherwise eliminated or suspended by the commissioner pursuant to a rule or regulation.

(b) However, the per-contract fees once eliminated or suspended by rule of the commissioner may be reinstated by subsequent rule and regulation of the commissioner adopted upon a public hearing at a later date upon the commissioner's determination that these fees are essential and necessary to the operation of the Division of Prepaid Funeral Benefits of the State Insurance Department.

(ii) On and after July 1, 2001, the commissioner shall then transfer from each per-contract fee remitted to the department, into the Prepaid Funeral Contracts Recovery Program Fund pursuant to

remitted to the department, into the Prepaid Funeral Contracts Recovery Program Fund pursuant to this act a portion of the fee in an amount to be determined by rules and regulations of the commissioner and thereafter to be administered by the commissioner with advice from the Prepaid Funeral Contracts Recovery Program Board, pursuant to the provisions of this subchapter.

**(B)** The per-contract fees shall be remitted quarterly to the department for each quarter of the calendar year with a quarterly fee form as prescribed by the commissioner.

**(C)** The fees shall be remitted to the department no later than forty-five (45) days after each quarter.

**(2) (A) (i)** On and after July 1, 2001, the commissioner may by rule or regulation eliminate, reduce, suspend, or increase the per-contract fee or the portion of the per-contract fee allotted to the Prepaid Funeral Contracts Recovery Program Fund.

**(ii)** The per-contract fee may be charged to the purchaser of the contract.

**(B)** Any fee so charged and collected shall not be included in the term "contract proceeds" as defined in § 23-40-103(4) and shall not be subject to the deposit requirements of § 23-40-114(a).

**(e) (1)** Absent the commissioner's approval of an extension for good cause shown, licensees failing to timely report and pay any administrative and financial regulations fees to the State Insurance Department Prepaid Trust Fund may be subject to a penalty of one hundred dollars (\$100) per day for each day of delinquency, payable to the fund.

**(2)** The commissioner shall deposit all administrative and financial regulation fees and any penalties assessed under this section directly into the fund as special revenues.

**(f) (1)** Notwithstanding the provisions of § 23-40-107, if there are any unused funds from fees collected from organizations under subsections (c) and (d) of this section not disbursed for personal services, operating expenses, maintenance and operations, and support and improvements for the Division of Prepaid Funeral Benefits of the State Insurance Department, such excess funds, if any, may be transferred to the Prepaid Funeral Contracts Recovery Program Fund to provide reparations to purchasers of prepaid funeral contracts who have purchased cash-funded prepaid funeral contracts from organizations that have been:

**(A)** Declared insolvent by a state or federal court of competent jurisdiction; or

**(B)** Determined by either the commissioner or a state or federal court of competent jurisdiction to have fund account deficiencies.

**(2)** Purchasers of prepaid funeral contracts requesting any discretionary relief from the Prepaid Funeral Contracts Recovery Program Fund after July 1, 2001, may include the contract holder or his or her surviving family representative or such other person as described in rules and regulations of the department.

**(3)** The commissioner may by rule and regulation describe the procedures, claim forms, qualifications, and process of filing a claim for aggrieved purchasers desiring to make a claim for reparations from any excess funds.

**(4)** No purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected from fees collected under this section to satisfy any judgment or economic loss of the purchaser from a prepaid funeral organization, except to the extent that the commissioner, in his or her discretion, has set aside funds to provide discretionary relief to purchasers of prepaid funeral contracts from insolvent prepaid funeral organizations or those organizations with trust fund account shortages, and subject to limits of the Prepaid Funeral Contracts Recovery Program Fund and the claimant's actual contract payments made, excluding additional damages or interest or other equitable relief, or noneconomic damages.

**HISTORY:** Acts 1985, No. 156, § 11; A.S.A. 1947, § 67-1723; Acts 1995, No. 852, § 11; 1997, No.

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